IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2932 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHESHKUMAR R PARIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2932 of 1989

MR KS JHAVERI for Petitioner No. 1

Mr.LR PUJARI, A.G.P. for Respondent No. 1

NOTICE SERVED for Respondents No. 2-3

MR JR NANAVATI for Respondent No. 4

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 11/01/2002

ORAL JUDGEMENT

1. The petitioner Dr.Maheshkumar Ramanlal Parikh, Assistant Director(Animal Husbandary) has filed this petition under Article 226 of the Constitution of India and prayed that the impugned Order at Annexure : A dated 23.3.1989 passed by the respondent No.4 be quashed and set aside and the respondents be directed to allow the petitioner to resume training of Post-Graduate course of M.V.S.C. with respondent No.4 University in view of the

provisional admission given to him at Annexure : E to this petition on 12.9.1988.

2. At the out-set I must state that the learned Counsel Shri K.S.Zaveri for the petitioner requested to adjourn this matter on the ground that he was unable to contact his client as he was transferred to Kutch. He requested Shri Pujari, learned A.G.P. appearing in this matter on behalf of the State to give the information about the present posting of the petitioner so that he can contact him to which Shri Pujari stated at the bar, on the instruction received from Shri P.R.Oza, Senior Clerk, from the respondent Department, that the petitioner was transferred from Kutch to Songadh some where in March, 2000, but he has not joined and reported to his duty at Songadh and therefore he is unable to give his present address.

3. Under the circumstances the request made by Shri Zaveri to adjourn this matter is turned down in view of the latest decision of the Hon'ble Supreme Court for the two reasons that this is a petition of 1989 and as per the endorsement made today it is listed for 28 time.

4. Thereafter, learned Counsel Shri Zaveri submitted on merit. He raised only one contention that the impugned order at Annexure : A was passed without extending any opportunity of hearing. Therefore, it is in violation of principles of natural justice and liable to be quashed and set aside.

5. Before appreciating the aforesaid contention I must state that on 4.10.1989 the petitioner Dr.Maheshkumar Parikh gave written undertaking to this Hon'ble Court to pay back the salary and other benefit borne by the Government as may be directed by this Court at the final disposal of this petition if he fails in this petition. It may be stated that on 4.10.1989learned Single Judge of this Court while issuing the Rule granted interim relief in terms of Para : 21(B) of the petition whereby the petitioner was allowed to go for the training on the Post Graduate Course of M.V.S.C. with the respondent No.4 University on condition that he will pay back the salary and other benefits borne by the Government as may be directed by this Court. Thus, under conditional interim order of the Court the petitioner appeared, but he could not complete the course for which the Government had to incur the expenses of about Rs.1,38,000/-. Thus, in my considered opinion the person who is not carrying out his subsequent order of transfer in the year 2000 and not completing the course after

getting the interim order from this Court would not be entitled for any discretionary relief from this Court under Article 226 of the Constitution of India. On merits the submission raised by Mr.Zaveri that without issuing notice the impugned order Annexure : A came to be passed may look attractive at first sight, but on the facts of this case I am fully convinced that when the Departmental Enquiry is already pending against him then there would not have been any difficulty in cancelling the admission given to the petitioner. The effect of initiation of Departmental Enquiry is not even disputed by the petitioner. However, it was tried to be submitted by Mr.Zaveri for the petitioner that the said Departmental Enquiry was initiated after giving him admission. This would not make any difference. When the enquiry is pending then the University would be at liberty to cancel the admission. If the enquiry was initiated earlier to his admission then obviously he would have been denied the admission. Time and again the Hon'ble Supreme Court has held that the Court should be slow in interfering with the educational matters and in such type of cases when the University has passed the order then this Court should not interfere with such orders on the ground that no opportunity of hearing was given to the petitioner. Affording of opportunity of hearing would be nothing but a formality. Therefore, in such type of cases when no prejudice is caused then only on this ground the impugned order cannot be set aside.

6. In view of above discussion this petition is failed and is hereby dismissed. However, there shall be no order as to costs. Rule discharged. Interim relief vacated.

As per Undertaking given by the petitioner he shall have to pay back the salary and other benefit borne by the State Government within one month from today, failing which the respondent Government will be at liberty to recover the same, including the deduction from his salary in instalment.

sd/-

Date : January 11, 2002 (B.J.Shethna, J.)

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